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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------------|
| 10/706,570 | 11/12/2003 | Michael A. Masini | MHM-00307/29 | 6665 |
| 25006 | 7590 | 10/17/2007 | | |
| GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021 | | | EXAMINER PATEL, TARLA R | |
| | | | ART UNIT 3772 | PAPER NUMBER |
| | | | MAIL DATE 10/17/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/706,570
Filing Date: November 12, 2003
Appellant(s): MASINI, MICHAEL A.

MAILED
OCT 17 2007
GROUP 3700

John G. Posa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/13/07 appealing from the Office action mailed 4/9/07

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|-----------|---------|
| 5,333,753 | Etheredge | 8-1994 |
| 2,897,961 | Bush | 5-1956 |
| 5,586,971 | Newman | 12-1996 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims: ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11,12,15-17, 20-23, and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Etheredge (5,333,753).

Etheredge discloses a packaging for a bandage (32) having a patient contacting surface with a peripheral edge (outer edges of device in see fig 3), the patient-contacting surface (36), including an absorbent layer (34) completely surrounded by an adhesive that extends to the peripheral edge in all directions (column 2 lines 46-51) comprising first and second removable sheets (12,22), both extending beyond the peripheral edge of the bandage and peripherally joined (column 3 lines 23-28) so that the bandage is contained between the removable sheets until use (see fig 2) and one of sheets is in direct contact with the entire adhesive (42) on the patient-contacting surface until that sheet is removed.

With respect to claim 12 and 17, Etheredge discloses the first and second removable sheets are made of paper (column 3 lines 22-23).

With respect to claim 15 and 20, Etheredge discloses the first and second removable sheets include a tab (14) to assist in removal.

With respect to claim 16, Etheredge discloses a bandage (32) having a patient contacting front surface (side facing the adhesive) with an adhesive (36), a back surface and peripheral edge (see fig 3), and a packaging portion including first and second removable sheets (12,22), both extending beyond the peripheral edge of the bandage, and wherein the first and second removable sheets are peripherally joined (column 3 lines 23-28) so that the bandage is contained between the removable sheets until use (see fig 2).

With respect to claim 21, Etheredge discloses wherein the first and second removable sheets are peripherally joined (column 3 lines 23-28) with an adhesive.

With respect to claim 22, Etheredge discloses the bandage portion comprises a flexible backing layer (36) and an absorbent layer bonded (by adhesive) to the flexible backing layer (it is flexible since it wraps around the finger, see figs 4-6).

With respect to claim 23, Etheredge discloses the flexible backing layer extends beyond the absorbent layer (see fig 3).

With respect to claim 26, Etheredge discloses the adhesive is disposed on flexible backing layer and surrounds the absorbent layer to form an island-type bandage portion (see fig 3).

With respect to claim 27, Etheredge discloses a method of applying a bandage, comprising the steps of providing the bandage construction as described above with respect to claim 16. Etheredge further teaches the steps of removing one of the first and second removable sheets to expose the entire patient-contacting front surfaces; applying the bandage portion to a recipient using the adhesive and removing the other removable sheet from the back surface of the bandage portion (see fig 4-6, column 2 lines 60-68 and column 3 lines 1-3).

With respect to claim 28, Etheredge discloses a bandage construction consisting of a bandage (32) portion with a patient-contacting surface including an absorbent layer (34) and an adhesive (36) and two removable packaging sheets (12,22), one on either side of the bandage portion (12), such that one of the sheets acts as a release layer to expose the adhesive for use.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Etheredge (753) in view of Bush (2,897,961).

Etheredge substantially disclose the invention, please rejection above; however, Etheredge does not discloses that the bandage has a flexible backing layer that is fluid-impermeable.

However Bush teaches a bandage having a flexible backing layer that is fluid-impermeable (column 5 lines 28-34). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the Etheredge's bandage having the flexible backing layer as taught by Bush to avoid direct contact with fluid to the wound.

Claims 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Etheredge (753) in view of Newman (5,586,971).

Etheredge substantially disclose the invention, please rejection above; however, Etheredge does not discloses that the bandage has two ends and

a mid section and wherein bandage portion is tapered such that the mid section is wider than one or both of the ends.

However Newman teaches a bandage having two ends and a mid section and wherein bandage portion is tapered such that the mid section is wider than one or both of the ends (see fig 2 element 12). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the Etheredge's bandage have the shape of two ends and a mid section and bandage portion is tapered such that the mid section is wider than one or both of the ends, as taught by Newman to be able to place the bandage over the site of the wound.

(10) Response to Argument

With respect to Appellant's argument that the removable sheet of Etheredge is not in direct contact with the patient-contacting surface of the bandage, the examiner respectfully disagrees. The removable sheet (12) is inherently in direct contact with the patient-contacting surface of the bandage, when the removable sheet (12) together with layer (38) as shown in drawing fig 2 is pressed on the outer adhesive layer (36) of patient contacting surface. Since the layer (38) is in direct contact with removable sheet (12) by adhesive (42), the sheets essentially define one layer and

they must be in contact with the adhesive when pressed down on the wound or patient contacting surface. When removable sheet (12) is pulled apart from the patient-contacting surface, it pulls layer (38) together as shown in figure 2 and further Etheredge discloses that to prevent separation of layers (12,38) adhesives (42,44) should be aggressive, heat sealing being preferred (column 3 lines 29-32).

It is submitted that Appellant's position is unreasonable with reference to claims 16, 27 and 28. The only elements of bandage that are affected by the "consisting of" closed-ended claim language are the macro elements, which are: the bandage portion having a patient-contacting front surface with an adhesive, a back surface and a peripheral edge. The "consisting of" language does not prevent further limiting these macro elements but only the addition of other macro elements. As an example, in applicant's claim 16, line 3 the packaging portion includes the open-ended term "including". Further, if applicant was not allowed to further limit the structure macro element after use of "consisting of" then "including" (an open-ended term) would be inconsistent with "consisting of". See *In re Mannesmann Demag Corp. v. Engineered Metal Products Co., Inc.* 230 USPQ 45 (Fed Cir, 1986) for open end closed terms in the same claim.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tarla Patel



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